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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/767,108

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John F. Aker

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INTELLECTUAL PROPERTY / TECHNOLOGY LAW

PO BOX 14329

RESEARCH TRIANGLE PARK, NC 27709

EXAMINER

MERCADO, JULIAN A

ART UNIT

PAPER NUMBER

1795

MAIL DATE

DELIVERY MODE

04/01/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/767,108	Applicant(s) AKER ET AL.	
	Examiner JULIAN MERCADO	Art Unit 1795	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-11,13-17,19 and 34-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1, 2, 5-11, 13-17, 19 and 34-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 2, 2009 has been entered.

Claims 1, 2, 5-11, 13-17, 19 and 34-44 are pending for consideration.

Claim Rejections - 35 USC § 112

The prior rejection of claims 1, 5-11, 13-17 and 19 under 35 U.S.C. 112, first paragraph has been withdrawn.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

(new rejection)

Claims 1, 2, 5-11, 13-17, 19 and 34-44 are rejected under 35 U.S.C. 112, first paragraph because the specification, while being enabling for the fan to draw air from the ambient environment through a grate member [142], does not reasonably provide enablement for the fan to "direct cooling gas from said ambient environment" given that the scope of the present claims

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only recites a "gap opening communicating with an ambient environment" as recited in independent claim 1. See par. [0076] of the specification and Figure 6 of the drawings. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. The extent of the amendment to the present claims defines the gap opening extending continuously along the full longitudinal extent of said top face, between the plate member and the top face of the battery, with said gap opening communicating with an ambient environment, but the fan is not considered enabled to draw air from this gap opening so as to direct this cooling gas from the ambient environment through said gap opening. It is suggested to positively recite the manner and structure in which the fan is disclosed to draw air such as recited in par. [0076], to wit, "A fan 144 is mounted in the collar member 140 to effect down-flow of air drawn from the ambient environment through grate member 142 onto the underlying battery assembly."

Claims 2, 5-11, 13, 14, 16, 17, 19 and 34-44 are rejected under 35 U.S.C. 112 as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 34 and 36-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 34 recites the limitation "medial portions" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 39 in line 2 recites a similar limitation to claim 34 and is rejected on the same grounds.

Claim 36 recites the limitation "the array of openings" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 37 in lines 1-2 recites a similar limitation to claim 36 and is rejected on the same grounds.

Claim 38 recites the limitation "elongate form openings" in lines 1-2. As claim 37 in line 1 and line 3 also recites an array of openings of elongate form, it is unclear if the "elongate form openings" in claim 38 are mutually exclusive. It is suggested to insert the definite article or other antecedent in the limitation of claim 38 to read --the elongate form openings--.

Claim Rejections - 35 USC § 102

The rejection of claims 1, 15, 16 and 19 under 35 U.S.C. 102(b) based on Hamada et al. (U.S. Pat. 5,800,942) has been withdrawn.

The examiner notes the amendment to independent claims 1 and 15 now reciting, inter alia, a plate member overlying and parallelly aligned with said top face to form a gap therebetween.... However, the examiner concedes that while the cover [16] forms a gap between the top face of the battery, this gap does not open along side edges of the plate member as presently claimed.

Claim Rejections - 35 USC § 103

The rejection of claim 14 under 35 U.S.C. 103(a) based on Hamada et al. (U.S. Pat. 5,800,942) has been withdrawn.

The rejection of claims 5-9 under 35 U.S.C. 103(a) based on Hamada et al. (U.S. Pat. 5,800,942) in view of Arai et al. (U.S. Pat. 6,204,769) has been withdrawn.

The rejection of claims 10 and 11 under 35 U.S.C. 103(a) based on Hamada et al. (U.S. Pat. 5,800,942) in view of Clements et al. (U.S. Pat. 6,690,576) has been withdrawn.

The rejection of claim 13 under 35 U.S.C. 103(a) based on Hamada et al. (U.S. Pat. 5,800,942) in view of Barrett Jr. (U.S. Pat. 3,904,439) has been withdrawn.

The rejection of claim 17 under 35 U.S.C. 103(a) based on Hamada et al. (U.S. Pat. 5,800,942) in view of Leskovec (U.S. Pat. 4,355,695) has been withdrawn.

Allowable Subject Matter

Claim 1 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 1st paragraph (scope of enablement) set forth in this Office action. The restriction requirement among patentably distinct species, as set forth in the Office action mailed on January 11, 2008, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Claims 2 and 34-44, directed to a thermal management system comprising a terminal strap and cover, are no longer withdrawn from consideration because the claim(s) requires all the limitations of an allowable claim.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian Mercado whose telephone number is (571) 272-1289. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

/Julian Mercado/
Examiner, Art Unit 1795

/PATRICK RYAN/
Supervisory Patent Examiner, Art Unit 1795